



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Montana State Office

5001 Southgate Drive

Billings, Montana 59101-4669

<http://www.blm.gov/mt>

In Reply Refer To:

MTM 98428 (Nov 2008 Comp Sale)  
3160 (922.JB)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 2, 2008

### DECISION

William H. Geer  
Policy Initiatives Manager  
Theodore Roosevelt Conservation Partnership  
6135 Delarka Drive  
Lolo, Montana 59847-9522

### Protest Dismissed

On September 19, 2008, the Bureau of Land Management (BLM) provided notice that 78 parcels of land (62,728.023 acres) would be offered in a competitive oil and gas lease sale on November 4, 2008. The notice indicated that the protest period for the lease sale would end on October 20, 2008. The lease sale was held on November 4, 2008.

On October 20, 2008, the BLM received a faxed protest (Enclosure 1) from you in which you noted that you were protesting four parcels on the November 4, 2008, competitive oil and gas lease sale on behalf of the Theodore Roosevelt Conservation Partnership (TRCP). The parcels subject to protest include the following:

MT 11-08-11, MT 11-08-12, MT 11-08-13 and MT 11-08-14.

All parcels are located in Beaverhead County, Montana, within the boundaries of the Dillon Field Office (FO) on lands administered by the BLM.

This protest addresses two issues:

- Mule deer and pronghorn habitat and winter migrations
- Sage grouse leks, brood-rearing grounds, winter habitat, and migration staging areas

The protest notes that the following individuals provided information for your protest:

- Bob Brannon-Montana Department of Fish Wildlife and Parks (MDFWP) wildlife biologist in Butte;
- Craig Fager-MDFWP wildlife biologist in Dillon; and
- Mr. Jim Roscoe, High Divide Program Coordinator with American Wildlands in Dillon, Montana.

We would point out that the BLM formalized consultation procedures with the MDFWP under Instruction Memorandum No. MT 2008-008 (Enclosure 2) dated October 27, 2007. We initiated consultation with the MDFWP for the parcels under protest and received a response from Mr. Brannon on June 23, 2008 (Enclosure 3). In that response, he mentioned Mr. Fager's recommendations for additional stipulations for sage grouse regarding the parcels on the November lease sale. His comments were generally similar to those you raised in your protest about sage grouse, and the locations of the protested parcels in relation to the Lima Reservoir 6 lek and Snowline lek. Overall, the letter from the MDFWP indicates the wildlife issues have been adequately identified and the parcels fairly stipulated with the exceptions for sage grouse. The response does not request additional stipulations for big game habitat and winter migration routes, just sage grouse. The Dillon FO of the BLM responded back on July 1, 2008 (Enclosure 4), to the MDFWP's letter and explained our reasons for not adding the requested stipulation. As to the comments of Mr. Roscoe, you did not provide any information directly from him in your protest.

#### Mule Deer and Pronghorn Habitat and Winter Migration

The protest indicates that the BLM should address seasonal habitat and current migration corridors used by mule deer and pronghorn in the area of the four protested parcels. It further notes that the TRCP could find no stipulations addressing migration needs for mule deer and antelope in the list of stipulations.

As noted above, all four protested parcels lie within the Dillon FO and leasing decisions are found in the Dillon RMP. The Proposed Dillon Resource Management Plan/Final Environmental Impact Statement (RMP/FEIS) was approved in April 2005. This RMP contained a reasonably foreseeable development (RFD) scenario for total oil and gas development in the FO in Appendix H that forecasts a total of six exploration wells and four development wells on all ownerships in the FO. Ten wells within the boundaries of the total FO would yield only a very low level of disturbance in the FO. Although there has been one recent seismic permit issued in the area, there is no current oil and gas exploration activities in the FO. There have only been 13 dry holes drilled in the FO over the last 28 years with the last one being completed in 1996. None of these wells were on federal minerals. Based on analysis that considered the very low level of oil and gas activities forecast by the RFD scenario and other resource uses, no specific oil and gas lease stipulations addressing big game migration needs were identified as needed in the RMP.

The protest cites various studies referring to oil and gas development in areas in Wyoming and Colorado where there has been extensive development of oil and gas and not the extremely low level forecast in the Dillon RMP RFD scenario. The BLM does not believe that these studies can be applied to the Dillon FO based on the low level of development forecast in the RFD scenario prepared for the Dillon RMP. The TRCP has not provided any evidence that these studies can be properly extrapolated to southwest Montana which has a completely different level of development for oil and gas.

In the case of the protested parcels, the BLM did not identify winter range on any of the lands in the parcels. Our Dillon FO consulted with the MDFWP, as documented in Enclosures 2 and 3, during their parcel review process for parcels in the FO including the four that have been protested. As noted above, the MDFWP provided comments on BLM's proposed lease parcel stipulations. In their letter of June 23, 2008, the MDFWP noted that overall they felt that wildlife issues had been adequately identified and that the parcels were fairly stipulated.

#### Sage Grouse Leks, Brood-Rearing Grounds, Winter Habitat, and Migration Staging Areas

The protest is also based, in part, on sage grouse concerns on all four parcels. The BLM has applied all stipulations identified in the approved RMP that are required for mitigating impacts to sage grouse from oil and gas development to the protested parcels. All four protested parcels are stipulated with Timing Limitation (TL) Stipulation MT 13-14 under which surface use is prohibited from December 1 through May 15 within winter and spring range for sage grouse. Parcels 11-08-12 and 11-08-14 are stipulated with TL Stipulation MT 13-6 that prohibits surface disturbance from March 1 through June 30 in nesting and brood-rearing habitat (defined as being within 3 miles of active leks). The use of these stipulations will provide adequate protection for sage grouse and are those stipulations required by the Dillon RMP which is the governing land use plan for the Dillon FO. This RMP was adopted in February 2006. TRCP has not provided any analysis to show that the studies they cite in the protest can be extrapolated to the FO and be used to show that the stipulations used in the FO and attached to the protested parcels are not adequate. The Dillon FO also addressed these issues in their letter of July 1, 2008, when responding to concerns raised by the MDFWP concerning sage grouse stipulations on parcels being considered for lease in the FO.

#### Conclusions

For the reasons stated above, the BLM denies this Protest of the subject parcels offered at the November 4, 2008, oil and gas lease sale. The BLM will issue leases for the lands included in parcels MT 08-11-11 through MT 08-11-14 after issuing this Decision.

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 (Enclosure 4) and the enclosed Form 1842-1 (Enclosure 5). If an appeal is taken, the Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision.

The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition for a stay pursuant to 43 CFR Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the Notice of Appeal, Petition for Stay, and any statement of reasons, written arguments or briefs must also be submitted to each party named in this Decision and to the Office of the Solicitor at the address shown on Form 1842-1 at the same time the original documents are filed in this office. Below is a list of the parties who purchased the subject parcels at the August 26, 2008, lease sale and, therefore, must be served with a copy of any Notice of Appeal, Petition for Stay, and Statement of Reasons.

In case of an appeal, the adverse party to be served is:

Lonewolf Energy, Inc., P.O. Box 81026, Billings, MT 59108-1026

/s/ Gene R. Terland

Gene R. Terland  
State Director

#### 6 Enclosures

- 1-Protest (without exhibits) Received October 28, 2008 (4 pp)
- 2-Instruction Memorandum No. MT 2008-008 (4 pp)
- 3-June 23, 2008, Letter from MDFWP (1 p)
- 4-July 1, 2008, Letter to MDFWP (3 pp)
- 5-43 CFR 4.21(a) (2 pp)
- 6-Form 1842-1 (2 pp)

cc: (w/enclosures)

Lonewolf Energy, Inc., P.O. Box 81026, Billings, MT 59108-1026

Pat Flowers, Regional Supervisor, FWP Region 3 Office, 1400 South 19<sup>th</sup>, Bozeman, MT  
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Dillon FO